IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 511 of 1999

in

SPECIAL CIVIL APPLICATIONNo 604 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

NARANDAS CHHAGANLAL

Appearance:

MR NAVIN K PAHWA for Appellants

MR J P Rawal, for GK RATHOD (on caveat) for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE D.P.BUCH

Date of decision: 06/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Notice. Mr J P Rawal, learned Advocate waives service of notice on behalf of respondent no.1.

This Letters Patent Appeal, under clause 15 of the Letters Patent, is directed against the judgment and order of the learned Single Judge recorded on 27.1.1999 in the aforesaid writ petition, whereby, the petition filed by the present appellant-Gujarat State Road Transport Corporation (for short, 'the ST Corporation') came to be rejected. The petition was filed by the ST Corporation against the award passed by the Labour Court, Vadodara on 02.5.1998 in Reference (LCV) No.485/94, whereby, the Reference came to be allowed. The termination order from service as a Conductor came to be quashed and reinstatement was directed with backwages to the extent of 90% with further direction to pay the backwages with interest of 18%, in case of delay beyond 1.6.1998.

2. The service of the respondent-Conductor was terminated w.e.f. 19.5.1993 by the appellant ST Corporation on the ground of medical unfitness, without notice and without following any procedure. On this ground, a Reference was made to the Labour Court by the workman-Conductor, wherein he succeeded, and an award was passed in his favour for reinstatement and backwages upto 90% and ita came to be confirmed by the learned Single Judge and hence this LPA.

3. The respondent was working as a Conductor of appellant ST Corporation since last 22 years before the Reference was made. That during the course of his duty hours, on 15.8.1998, by placing a leave report, while he was going in another bus, at that time, there was a road accident on account of rashness and negligence on the part of the driver of the said bus. and the respondent-Conductor, who was travelling as one of the passengers in the bus had sustained serious injuries, which culminated into permanent partial disablement of 50% on his right leg and that part of the body was permanently impaired. Bodily frame and the integrity was thus impaired. The Medical Officer certified for light work and, therefore, he was entrusted light duty work and he worked till 2.10.1990. Thus, the injured Conductor was allowed to do light clerical, table job. Thereafter, Civil Surgeon certified that he was unfit for the work as Conductor and on that basis, without notice and without

following any procedure for termination of the service, he came to be terminated w.e.f. 19.5.1993.

4. Learned Advocate Mrs S N Pahwa, appearing for the appellant-ST Corporation, contended that there is no rule or provision, under which the respondent-Conductor could be permitted to work on clerical job, since the injuries sustained by him had not occurred during the working hours or on duty hours. It was, therefore, submitted that the award of the Labour Court and thereafter, the impugned order of the learned Single Judge, is vulnerable, as it is illegal in absence of any rule or provision. This submission is countenanced by Mr J P Rawal, for Mr G K Rathod, appearing for the respondent.

5. The unfortunate victim of road accident, the respondent-Conductor, who has sustained permanent partial disablement and, thus, impairment to the extent of 50% of his bodily integrity, whose services came to be terminated without giving any opportunity or even without show cause notice, only on the basis of medical unfitness, is held to be illegal by the Labour Court and the order of the Labour Court challenged before the learned Single Judge in a writ petition, also came to be dismissed.

6. The learned Single Judge, while dismissing the writ petition of the ST Corporation, has observed that even after the permanent partial disablement, the management utilized the services of the Conductor. He was, thus, discharging alternative duties other than the Conductor of a bus. Nothing has been successfully shown, which would warrant our interference against the order of the learned Single Judge, while confirming the award.

7. Apart from that, in a case of model employer like the G S R T Corporation, which is nothing but a Corporation of the State Government owes some duty towards its staff sustaining disablement. It is not a proper answer for the model master of the management to question, upon termination of service, upon physical unfitness. It is true that the person may not be fit for doing a particular type of work or assignment, howsoever the social security in a welfare State like ours is. Therefore, the model master has to adjust such disabled employee. Of course, the grievance that upon strict construction, directing reinstatement on the same post, i.e. as a Conductor, does not necessarily mean that the same work of a Conductor should be entrusted, but in other words, it means the pay enjoyed by the person sustaining disablement, should be protected. Even, in

case, if he is given any other light or clerical or non-technical work, it will be open for the appellant ST Corporation to assign the work other than the work of a Conductor, subject to full protection of pay and other benefits of the said post.

8. With these observations, this Letters Patent Appeal is dismissed while affirming and confirming the order of the learned Single Judge as well as the award of the Labour Court. Notice discharged. No order as to costs.

6.12.2000 [J N Bhatt, J.]

msp [D P Buch, J.]